

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1921.

No. 3707.

824

**JENNIE M. PRALL, ANNIE PRALL FAHNESTOCK, EMMA
PRALL KNORR, ET AL.,**

vs.

ALBERT HARPER, RECEIVER.

**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.**

FILED AUGUST 15, 1921.

PRINTED SEPTEMBER 15, 1921.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1921.

No. 3707.

JENNIE M. PRALL, ANNIE PRALL FAHNESTOCK, EMMA
PRALL KNORR, AND GLADYS KNORR LAVAGNINO, AP-
PELLANTS,

vs.

ALBERT HARPER, RECEIVER, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 3707.

JENNIE M. PRALL et al., Appellants,

vs.

ALBERT HARPER, Receiver.

a Supreme Court of the District of Columbia.

Equity. No. 24579.

ELIZABETH C. PRALL, Plaintiff,

vs.

JENNIE M. PRALL, ANNIE PRALL FAHNESTOCK, EMMA PRALL
KNORR, and GLADYS KNORR LAVAGNINO, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Petition.*

Filed May 16, 1921.

In the Supreme Court of the District of Columbia, Holding a Court of Equity.

Equity. No. 24579.

ELIZABETH C. PRALL, Plaintiff,

vs.

JENNIE M. PRALL, ANNIE PRALL FAHNESTOCK, EMMA PRALL
KNORR, and GLADYS KNORR LAVAGNINO, Defendants.

The plaintiff, Charles V. Imlay, Committee of Elizabeth C. Prall, respectfully shows unto this Honorable Court as follows:

1. That he is a citizen of the United States, a resident of the State of Maryland, and brings this petition as Committee of Elizabeth C. Prall, by order of appointment dated June 21, 1919, in a cause entitled Elizabeth C. Prall, Lunacy No. 7761,

2. That the defendants, Jennie M. Prall, Annie Prall Fahnestock, Emma Prall Knorr and Gladys Knorr Lavagnino are citizens of the United States, and residents of the District of Columbia, and are sued as defendants in their own separate rights to the extent of their respective interests in the real estate hereinafter described.

3. That heretofore by a decree of November 13, 1911, trustees were appointed by this Court and directed to sell at public or private sale certain real estate, to wit, part of Lot numbered Five (5) in T. Drury, G. W. Riggs and Others' Subdivision of Square
2 numbered One Hundred and eighty-five (185) as per plat recorded in Liber B, folio 210, one of the records of the Office of the Surveyor of the District of Columbia, as more fully described in said decree and in the petition of June 13, 1911, said petition and said decree together with all pleadings heretofore filed in this cause being referred to and made a part hereof; that thereafter said decree was affirmed with certain modifications by the Court of Appeals of the District of Columbia in a decision entitled Prall vs. Prall, 39 App. D. C. 100, said modifications being set forth in the mandate of said Court of Appeals filed in this cause October 17, 1912, and embodied in a modified decree of May 22, 1914; that said other proceedings were had in this cause as that thereafter Robert H. McNeill, Hayden Johnson and Thomas W. O'Brien became the trustees in the place of the National Savings and Trust Company, the previous trustee, for the purpose of carrying out the terms of the order of sale hereinbefore referred to; that the carrying out by the previous trustee and by said trustees last mentioned of the terms of sale have been delayed because of the cloud existing upon the title of said real estate by reason of the pendency of the so-called ejectment suit entitled Elizabeth C. Prall vs. Emma C. Knorr, et als., defendants, Law No. 54889; that on the 20th day of June, A. D. 1919, said Elizabeth C. Prall was found to be of unsound mind and plaintiff was named as her committee by said order of June 21, 1919, and thereafter qualified; that upon qualifying plaintiff being of the opinion that there was no merit in the said ejectment suit by leave of Court first had and obtained in an order
3 passed in said Lunacy Cause July 29, 1919, dismissed said ejectment suit and thus opened the way for a sale of said property; that said trustees as soon as the market appeared favorable thereafter advertised said property for sale at public auction on November 26, 1919, but that on November 6, 1919, a petition was filed in this cause by defendant, Gladys Knorr Lavagnino to vacate said orders of sale and thereafter an amended petition for the same purpose November 20, 1919, following which upon the coming in of answers of this committee and the trustees as well as the other parties, as will appear by the record in this cause, a decree was passed December 12, 1919, affirming said decrees of November 13, 1911 and May 22, 1914, and each and every order or proceeding pending depending thereon in this cause except insofar as the same decreed an immediate sale of the property described herein, and in said decrees; that thereafter testimony was taken concerning the advisability of a sale at that time and on the 12th

day of April, 1920, a decree was passed for the sale at that time of said real estate and said petition and said substituted petition of said Gladys Knorr Lavagnino were severally dismissed; that upon an appeal being taken therefrom to the Court of Appeals of the District of Columbia, said decree of April 12, 1920, was affirmed by a decision of said Court of Appeals February 7, 1921; that a stay of the mandate having been had on application of appellants, said mandate was filed in this cause on or about April 18, 1921; that as soon as practicable thereafter said trustees proceeded to advertise said real estate for sale at public auction on May 11, 1921.

4 4. That on the day prior to the day fixed for said auction sale, to wit, on the 10th day of May, A. D., 1921, defendant, Gladys E. Knorr Lavagnino by Emma Prall Knorr, her attorney-in-fact, filed a certain bill in equity in a cause entitled Gladys E. Knorr Lavagnino vs. Jennie M. Prall, Equity No. 39018, praying for a review of the proceedings herein upon which said decrees of sale were based, alleging as the principal ground for said review the fact that in the various proceedings had in this cause to determine the interests of the parties, no proof was offered at any time of the marriage of said Elizabeth C. Prall to her deceased husband, William E. Prall; that plaintiff is advised that this suit is vexatious and that the grounds upon which it is sought to review the previous proceedings in this cause are specious only, inasmuch as the defendants have by said amended petition of November 20, 1919, and other pleadings filed in this cause then and later many times admitted the correctness of the finding with reference to the nature of the interest of the various parties herein to said real estate.

5 5. That said public sale was had on May 11, 1921, as advertised; that prior to the crying of said sale an announcement was made by one believed by this plaintiff to be acting for and on behalf of the defendants herein that the sale of the property must be made subject to the cloud of a pending equity suit, meaning thereby Equity suit No. 39018, above referred to; that although the validity of said pending equity suit as a real cloud on the title was denied by the

5 attorney for the trustees, it is believed by this plaintiff that the bidding was hurt by said announcement; that nevertheless bidding on the property began and progressed until a bid was had of \$40,500; that thereafter upon the trustees having announced that they would not submit a bid as low as that, an offer was made by one bidder after the sale had closed of \$45,000, said bidder making a deposit of \$1,000 at the time of delivering his bid to the auctioneer; that it does not appear at this time whether or not said price of \$45,000 is the highest obtainable and plaintiff is advised that said trustees are endeavoring to obtain a higher bid; that whether said bid of \$45,000 is accepted or not, a sale cannot be had with any liens existing upon the property; that plaintiff is advised that the pendency of said equity cause No. 39018, will have the effect of preventing the clearing of the title and of a sale of the property at the price of \$45,000 or any other price; that plaintiff is filing in said equity suit a motion to dismiss the same for defects appearing upon the face of the bill of complaint and for facts

appearing upon this record, but that plaintiff is advised that if said bill of complaint is dismissed the plaintiff therein, said Gladys E. Knorr Lavagnino, has a right of appeal to the Court of Appeals of the District of Columbia and that while an appeal is pending, if she does appeal, a cloud will exist upon the title to the real estate and prevent a carrying out of any terms of sale that may be had with any bidder or prospective purchaser; that plaintiff is further advised that should said equity suit be dismissed, said plaintiff therein and the other defendants herein might
6 prosecute further suits which would have the effect of constituting further clouds upon the title to said real estate.

6. That, as will appear by the testimony adduced in this cause before the Examiner January 3, 1920, and at adjourned dates thereafter, there existed at that time upon the property above described an accumulation of upwards of twenty years' taxes amounting to the sum of \$15,000 or \$16,000 upon which penalties were running of 12% and 8%; that plaintiff is advised that since said date, further penalties and additional taxes have accrued; that plaintiff is further advised that said life tenants have been receiving rental from one part of the property, 918 16th Street, of about \$100.00 per month, which they are retaining for their own use and are not applying to taxes upon the property, of which plaintiff's ward is receiving no share; that plaintiff is informed, and believes, and therefore avers that the ages of the three life tenants, Jennie M. Prall, Annie Prall Fahnestock and Emma Prall Knorr are not less in either case than 51 years, and that the quantity of their interest in the proceeds of the real estate above described as fixed by equity rule No. 71, would be not more than one-ninth thereof; that on the assumption that said property sold for \$45,000 their interest would accordingly be \$5,000 which when applied to the payment of taxes would leave a balance due from them in an accounting of something over \$10,000 or \$11,000; that plaintiff is advised that said life tenants, Jennie M. Prall, Annie Prall Fahnestock and Emma Prall Knorr

7 have no funds out of which a deficiency decree could be satisfied that plaintiff is advised that he is entitled for an accounting in this cause to charge said defendants and their surety upon the supersedeas bond filed in connection with the last appeal in the Court of Appeals referred to for a deficiency in the accounting, but that plaintiff is advised that for any deficiency occurring by an accumulation of taxes subsequent to the filing of the mandate in the Supreme Court of the District of Columbia on or about April 16, 1921, that said life tenants and their surety would not be liable upon said bond; that as a result thereof plaintiff is advised that the continuance of said life tenants in possession and their failure to pay taxes, will result in a further increase of the deficit as against them without the possibility of satisfying the same.

7. That plaintiff is advised that the trustees above-mentioned have in connection with the advertisement of sale in November, 1919, as aforesaid, and in May, 1921, as aforesaid, and in connection with other expenses legitimately incurred by them, have created liabilities to the extent of \$600.00, for which they have no funds in

their possession to make payment and can realize no funds other than such as may come from the sale or rental of the real estate described; that plaintiff since his appointment as committee aforesaid has received no funds belonging to the estate of his ward and has no possibility of receiving any funds other than such as might come from the sale or rental of said real estate; that plaintiff's ward has been since her adjudication June 20, 1919, a public charge at the

8 Government Hospital for the Insane, and has since that date been in need of money for clothing and for such minor luxuries as might alleviate her condition as a patient in an insane asylum; that with a little money much could be done to relieve her condition; that with a substantial sum of money, plaintiff is advised that she might be placed in another institution where the surroundings would be more suited to her refinement of taste and character.

8. That the defendants herein have persistently refused to admit access to the property for the purpose of inspection by appraisers or by prospective bidders and that the trustees have been greatly embarrassed in attempts to sell the property through failure to have prospective purchasers examine the same on the interior.

Wherefore, the premises considered, plaintiff prays:

1. That process issue from this Honorable Court directed to said defendants requiring them to answer the exigencies of this petition.

2. That rules to show cause issue herein directed to said defendants requiring them by a day certain to be named therein to show cause, if any they have why a receiver should not be appointed pending the hearing upon this petition to take possession of said real estate described in this petition, and collect the rents and profits therein and hold the same under the order of this court and to show cause, if any they have, why an injunction shall not issue restraining said defendants from filing further proceedings either at law or in equity which will interfere with a sale of the real estate described
9 herein under the terms of the decrees named in this petition, and to show cause, if any they have, why an order shall not be passed commanding defendants to permit prospective purchasers to examine the interior of the real estate described in this petition.

3. That such other and further relief be given as to the Court may seem meet and proper.

CHARLES V. IMLAY,
Committee.

OFFUTT & IMLAY,
By CHARLES V. IMLAY,
Attorneys for Committee.

DISTRICT OF COLUMBIA, ss:

I, Charles V. Imlay, being first duly sworn, on oath depose and say that I have read the annexed petition by me subscribed and know the contents thereof; that the matters and things therein stated as upon my personal knowledge are true and those stated as upon information and belief, I believe to be true.

CHARLES V. IMLAY,

Subscribed and sworn to before me this 16th day of May, A. D., 1921.

OLIVE E. FITZ GERALD, [SEAL.]
Notary Public, D. C.

10

Rule to Show Cause.

Filed May 16, 1921.

* * * * *

Upon consideration of the petition of Charles V. Imlay, Committee of Elizabeth C. Prall, filed herein May 16, 1921, it is hereupon by the court this 16th day of May, A. D., 1921,

Ordered that the defendants in said petition named, Gladys E. Knorr Lavagnino, Jennie M. Prall, Annie Prall Fahnestock and Emma Prall Knorr, show cause, if any they have, on the 20th day of May, A. D. 1921, at 10.00 A. M. or as soon thereafter as counsel may be heard why a receiver shall not be appointed to take possession of the real estate named in said petition pending the sale thereof by the trustees named in the order of sale referred to in said petition, and why said defendants shall not be enjoined from filing any suits at law or in equity to interfere with the progress of said sale, and further to show cause, if any they have, why an order shall not be passed commanding defendants to permit prospective purchasers to examine the interior of the real estate for the purpose of sale.

Provided a copy of this rule to show cause shall be served upon said defendants personally or upon said defendant, Gladys E. Knorr Lavagnino by delivering the same to Emma Prall Knorr, her attorney-in-fact before the 18th day of May, A. D. 1921.

WENDELL P. STAFFORD,
Justice.

11

Marshal's Return.

Served a copy of the within rule on Jennie M. Prall, May 16, 1921, Annie Prall Fahnestock, May 18, 1921, both personally. Emma Prall Knorr and Gladys Knorr Lavagnino not to be found. May 20, 1921.

MAURICE SPLAIN,
Marshal.

Rule to Show Cause.

Filed May 23, 1921.

* * * * *

Upon consideration of the petition of Charles V. Imlay, Committee of Elizabeth C. Prall, filed herein May 16, 1921, it is hereupon by the Court this 23rd day of May, A. D., 1921.

Ordered that the defendants in said petition named, Gladys E.

Knorr Lavagnino, Annie Prall Fahnestock and Emma Prall Knorr, show cause, if any they have, on the 27th day of May, A. D., 1921, at 10-00 A. M., or as soon thereafter as counsel may be heard why a receiver should not be appointed to take possession of the real estate named in said petition pending the sale thereof by the trustees named in the order of sale referred to in said petition, and why said defendants shall not be enjoined from filing any suits at law or in equity to interfere with the progress of said sale, and further to show cause, if any they have, why an order shall not be passed commanding defendants to permit prospective purchasers to examine the interior of the real estate for the purpose of sale.

12 Provided a copy of this rule to show cause shall be served upon said defendants personally or upon said defendant, Gladys E. Knorr Lavagnino, by delivering the same to Emma Prall Knorr, her attorney-in-fact, on or before the 25th day of May, A. D., 1921.

WENDELL P. STAFFORD,
Justice.

Marshal's Return.

Served a copy of the within rule on Gladys E. Knorr Lavagnino, Annie Prall Fahnestock, Emma Prall Knorr, all personally May 23, 1921.

MAURICE SPLAIN,
U. S. Marshal.

13 *Affidavit of James Wm. McNeill.*

Filed June 6, 1921.

* * * * * *

DISTRICT OF COLUMBIA, ss:

I, James Wm. McNeill, do solemnly swear that, as attorney for Robert H. McNeill, Hayden Johnson and Thomas W. O'Brien, Trustees appointed by the Court to sell the property described in the above entitled cause, I attended the auction sale of said property on May 11th, 1921. After Adam A. Weschler, Esq., Auctioneer in charge of said sale, had read the advertisement of sale and explained fully the terms thereof and announced that the trustees reserved the right to with-hold the property from sale provided same did not bring a fair and reasonable price, One AcAlvoy, as I understood the name, announced to the crowd in attendance that one Gladys E. Knorr Lavagnino had filed an equity suit in the Supreme Court of the District of Columbia in the nature of a Bill of Review, whereby she attacked the title to said property and that anyone purchasing same would take subject to her rights in the premises as disclosed by said equity suit. On the day of sale and prior thereto, the defendants, Jennie M. Prall and Emma C. Prall Knorr, tenants in possession, refused to permit inspection of the interior of said property by prospective bidders and this fact coupled with the announcement of the equity suit above referred to, in my opinion,

which opinion was concurred in by a number of persons present with whom I talked, depressed bidding for said property in a very marked degree.

At the first, the two properties were sold as a whole and bid off at a price of Forty thousand Five hundred (\$40,000.00) dollars and immediately thereafter sold separately and brought the aggregate price of Thirty-nine thousand Seven hundred and Fifty (\$39,750.00) dollars, and the trustees being of the opinion that the prices offered were not of the reasonable value of the properties, announced, through the auctioneer, that said property would be withdrawn from sale and later, readvertised.

Since the day of sale, I and my clients, the Trustees, have made special endeavors to procure the submission of better offers for said properties and in one instance have secured, through the agency of Percy H. Russell, Esq., who has received from one Felix Lake an offer of Fifty thousand (\$50,000.00) dollars, subject to the deduction of a brokerage commission of One thousand six hundred (\$1,600.00) dollars and said Russell now has in hand, as I am informed, a deposit of one thousand (\$1,000.00) dollars on account of said offer and is ready to close the purchase of said properties at the price aforesaid.

JAMES WM. McNEILL,

Subscribed and sworn to before me this fourth day of June, A. D., 1921.

JAMES WM. McNEILL.

Notary Public.

Order Appointing Receiver.

Filed June 10, 1921.

* * * * *

Upon consideration of the petition of Charles V. Imlay, Committee of Elizabeth C. Prall, plaintiff herein, filed on the 16th day of May, A. D., 1921, and the rules to show cause issued thereon on the 23rd day of May, A. D., 1921, to the defendants, Jennie M. Prall, Annie Prall Fahnestock, Emma Prall Knorr and Gladys Knorr Lavagnino, and upon the hearing thereon of argument by counsel for the respective parties, it is hereupon by the Court this 18th day of June, A. D., 1921;

Ordered that Albert Harper, Esquire, be and he is hereby appointed a receiver in this cause and as such is hereby directed to take possession of the real estate described in said petition and more fully described in the previous petitions filed in this cause, to collect the rents and profits thereof under the direction of this Court, until further order of this Court; and it is hereby ordered that until the realization by said receiver of assets, no bond shall be required of him for the faithful performance of the trust in him reposed;

And the said defendants are hereby directed forthwith to surrender possession of said real estate to said receiver.

WILLIAM HITZ,
Justice.

From the foregoing order, the defendants, Jennie M. Prall, Annie Prall Fahnestock, Emma Prall Knorr and Gladys Knorr Lavagnino severally appeal to the Court of Appeals of the District of Columbia, which appeal is hereby allowed, and the supersedeas bond on the appeal is hereby fixed in the sum of \$20,000 and the bond for costs, \$100.00 or in lieu thereof a cash deposit of \$50.00

WILLIAM HITZ,
Justice.

Memorandum.

July 5, 1921.—Bond on appeal of Defendants for \$100. approved filed.

16

Designation of Record on Appeal.

Filed August 8, 1921.

* * * * *

The Clerk of the Court in making up the Transcript of Record on appeal will include therein the following:

Petition of Committee for Receiver and injunction and Rules thereon, filed May 16, 1921, and May 23, 1921.

Affidavit of J. W. McNeil-, filed June 6th, as to sale.

Order appointing Receiver of June 10, 1921, and appeal noted and bond fixed.

Memorandum of approval of bond on appeal and the filing thereof.

The record and proceedings set forth in this cause as appears in the previous appeals herein, which said record, by consent, the Clerk will not transcribe as the same is now of record in the Court of Appeals in causes numbered 3420 and 2391, both of which are referred to and to be considered as a part of the record on this appeal.

Assignments of Error.

This designation.

EMMA P. KNORR.
GLADYS KNORR LAVAGNINO.
MRS. FAHNESTOCK.

Service of the foregoing designation of record and receipt of copy thereof acknowledged August 5, 1921.

OFFUTT & IMLAY,
By CHARLES V. IMLAY,
Attorney- for Plaintiff.

17

Assignments of Error.

Filed August 10, 1921.

* * * * *

The Court erred in appointing a receiver in the above entitled cause.

2. The Court erred in holding that it had jurisdiction to appoint a receiver herein as a matter of law.

3. The Court erred in passing a decree for the appointment of a receiver herein as a matter of fact.

KNORR,
LAVAGNINO,
FAHNESTOCK,
Defendants.

Service of the foregoing Assignments of Error and receipt of copy thereof, acknowledged August —, 1921.

Attorneys for Plaintiff.

To Messrs. Offutt & Imlay,
Attorneys for Plaintiff:

Please take notice that we have included in the Designation of Record the foregoing Assignments of Error.

KNORR,
LAVAGNINO &
FAHNESTOCK,
Defendants.

18 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 17, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 24579 in Equity, wherein Elizabeth C. Prall is Plaintiff and Jennie M. Prall et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 12th day of August, 1921.

[Seal of Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.
E. W.

Endorsed on cover: District of Columbia Supreme Court. No. 3707. Jennie M. Prall et al., appellants, vs. Albert Harper, receiver. Court of Appeals, District of Columbia. Filed Aug. 15, 1921. Henry W. Hodges, clerk.

COURT OF APPEALS
DISTRICT OF COLUMBIA

FILED

NOV 2 - 1921

IN THE

Henry W. Rodgers
Plaintiff

Court of Appeals, District of Columbia

OCTOBER TERM, 1921.

No. 3707.

JENNIE M. PRALL, ANNIE PRALL FAHNESTOCK, EMMA
PRALL KNORR, ET AL.,

vs.

ALBERT HARPER, RECEIVER,

BRIEF FOR APPELLEES, ALBERT HARPER,
RECEIVER, AND CHARLES V. IMLAY,
COMMITTEE.

ALBERT HARPER, *Receiver*,
GEORGE W. OFFUTT, JR.,
CHARLES V. IMLAY,
Attorneys for Charles V. Imlay, Committee.

IN THE
Court of Appeals, District of Columbia

OCTOBER TERM, 1921.

No. 3707.

JENNIE M. PRALL, ANNIE PRALL FAHNESTOCK, EMMA
PRALL KNORR, ET AL.,

vs.

ALBERT HARPER, RECEIVER.

BRIEF FOR APPELLEES, ALBERT HARPER,
RECEIVER, AND CHARLES V. IMLAY,
COMMITTEE.

STATEMENT OF CASE.

This case has been here twice before, being the case of *Prall vs. Prall*, 39 App. D. C., 100, decided May 30, 1912, and the case of *Jennie M. Prall, et al. vs. Charles V. Imlay, Committee, etc., et al.*, 49 W. L. R., 146, decided February 7, 1921. While the caption contains merely the name of Albert Harper, receiver, as appellee, an examination of the record will show that the

petition (R., p. 1) filed May 16, 1921, was the petition of the plaintiff committee in the Court below, being the substituted plaintiff for Elizabeth C. Prall, as disclosed in the caption in the second decision referred to above, the original caption being retained, however, by the clerk in the court below. It will be noted that the rules to show cause were issued on behalf of said committee and that the order of June 10, 1921 (R., p. 8) appointing appellee, Albert Harper, receiver of the real estate involved in this cause was at the instance of said committee. It will be further noted that the designation of record and assignments of error were directed to said committee and service thereof acknowledged by his attorneys. A reference to the docket number below in the two reported cases above and this case will further reveal the identity of the two cases. Thus this brief is filed on behalf of the appellee, the receiver, and said committee, the latter being one of the chief parties in interest.

The order of the court below of June 10, 1921 (R., p. 8), appointing the appellee, Albert Harper, receiver, was based upon the allegations of the petition of said committee of May 16, 1921 (R., p. 1), and the rules to show cause issued thereon of May 16 and May 23, 1921 (R., p. 6), to which, as will appear by the record, no answers were ever filed. *The appeal is taken, therefore, in face of the uncontradicted averments of said petition.* These averments indicated two chief grounds upon which the prayer for receiver was based: (1) the delay in making the sale of the property involved in this cause arising through the pendency of the bill of review which is the subject-matter of the appeal in the case of *Lavagnino vs. Prall*, No. 3706, now pending in this court, and (2) the irreparable loss being suffered

by the continuation of the waste being committed by the life tenants in not paying the accumulating taxes upon the property.

I. RECEIVER NECESSARY BECAUSE OF DELAY IN PROSECUTION OF BILL OF REVIEW.

The petition (R., p. 1) shows the qualification of the committee as the representative of Elizabeth C. Prall and his substitution in the subject-matter of this litigation involving a decree passed as aforesaid back as far as November 13, 1911, for the sale of certain real estate on 16th Street, in the District of Columbia, described in the petition, in which said Elizabeth C. Prall is the owner of a one-fourth vested interest and a one-fourth contingent interest. By the decision in *Prall vs. Prall*, 39 App. D. C., 100, which shows (page 102), that the litigation was begun as far back as 1904, this decree was affirmed with modifications, which modifications were embodied in a modified decree of May 22, 1914. The petition further shows that from said date in 1914, to the qualification of said committee, the carrying out of said decree of 1914, had been prevented because of clouds existing upon the title by the pendency of independent litigations brought by the ward of the committee; that the committee removed these litigations and then began to cooperate with the trustees in endeavoring to make a sale of the property involved. The petition then shows that the sale was delayed because of a petition of November 20, 1919, and a substituted petition of November 25, of that year, of Gladys E. Knorr Lava-gnino, which assail all the proceedings theretofore taken in the cause on the ground that she was under age at

the time of the passing of the decrees of November 11, 1913, and May 22, 1914. Reference is made to the second appeal referred to above in 49 W. L. R., 146, in which it appears that all the contentions of the appellants were decided against them and that the decision in the previous appeal was followed. The mandate of this Court was filed in the Court below April 18, 1921. The trustees proceeded immediately to advertise the property for sale which was done on May 11, 1921, with the results set forth in the petition (R., p. 3), in particular a bid of \$45,000. The affidavit of the attorney for the trustees, James W. McNeill, Esq., (R., p. 7) shows that one McAlvoy, called by clerical error in the record (R., p. 7) "AcAlvoy," purporting to act on behalf of Gladys E. Knorr Lavagnino, the appellant in the accompanying cause now pending in this Court entitled *Gladys E. Knorr Lavagnino vs. Jennie M. Prall, et al.*, No. 3706, arose at the sale and announced to the bidders the pendency of the bill of review involved in the latter cause and that any one purchasing the property would take subject to this bill of review as a cloud on the title.

The petition shows, therefore, that on May 16, 1921, when it was filed, the trustees were in the position of having their efforts to make a sale at a favorable price hindered by these circumstances, and that they were looking forward to the possibility, especially in view of the coming recess of this Court, of a sale being delayed through the summer.

II. RECEIVER NECESSARY BECAUSE OF CONTINUOUS LOSS THROUGH WASTE OF LIFE TENANTS.

The petition shows, however, a more pressing consideration necessitating the appointment of a receiver.

There was in existence on January 3, 1921, at the time that the testimony was taken in this cause, prior to a decision of the second appeal above mentioned, taxes accumulated on the property for upwards of twenty years, amounting to the sum of \$15,000 or \$16,000 upon which penalties were running to the amount of 12 per cent and 8 per cent, and that further penalties and additional taxes were accruing. The committee sets forth furthermore that the life tenants, the first three appellants herein, had been retaining the rental from the property for their own use and not applying to taxes upon the property, the committee's ward receiving no share thereof; that the committee was informed and averred upon the basis of that information that the ages of these three life tenants, Jennie M. Prall, Annie Prall Fahnestock and Emma Prall Knorr were not less in either case than fifty years, and that the quantity of their interest and the proceeds of the sale of the above-described real estate as fixed by Equity Rule No. 71, of the Court below, would be not more than one-ninth thereof; that on the assumption that the property would sell for \$45,000, their interests would accordingly be \$5,000 which when applied to the payment of taxes would leave a balance due from them in an accounting of something over \$10,000 or \$11,000. The petition further states that these life tenants had no funds out of which a deficiency decree could be satisfied.

As between life tenants and remaindermen, the life tenants are charged with the payment of taxes, and this without reference to whether or not rents are being received from the property:

“It has been held that equity may take jurisdiction to protect a life estate and remainder which

is liable to be lost through inability of the life tenant to pay the taxes and may if necessary order the sale of the land, or, if the rents are sufficient to pay the taxes, may appoint a receiver to collect rents sufficient in amount to discharge the tenant's liabilities, or may entertain a suit to compel the tenant to reimburse the remainderman for expenditures made in paying such taxes."

17 R. C. L., 637, citing numerous cases in support of these propositions.

"The permission by the tenant for life of the forfeiture to the State because of a failure to pay taxes will constitute waste." 28 A. & E. Enc., 890.

In *Cannon vs. Barry*, 59 Miss., 289, the tenant is held liable for non-payment of taxes and forfeiture to the State even where the land forfeited was unproductive. This case goes further and says that in addition to the taxes being a charge upon the land, the taxes were the individual debt of the life tenant.

The cases of *Stetson vs. Day*, 51 Me., 434, and *Phelan vs. Boylan*, 25 Wis., 679, also held the tenant liable for waste for non-payment of taxes.

The above propositions have been recognized as the law of the District of Columbia, in the case of an estate *pur autre vie*, and it is believed that the same rules are applicable to life estates generally. In *Elliot vs. Lamon*, 1 MacA., 647, the tenant was held liable for waste for non-payment of taxes not only to the extent of rents collected by him, amounting to \$600.99, but for the difference between those rents and the total amount of taxes, amounting to \$1,022.62. The Court says (p. 650) "There is no question as to the personal liability of the defendant (life tenant) to meet these charges."

It is submitted, however, that apart from the above considerations and apart from the existence of waste in a technical sense, the life tenants in this case would be liable because this case is in a Court of Equity upon entirely independent grounds, and being there, a Court of Equity will protect the estate from extinction by virtue of its general jurisdiction.

CONCLUSION.

Thus at the time of the filing of the petition and the request for the appointment of a receiver, the trustees and the committee, as the representative of the party interested to the extent of a one-fourth vested interest and the possibility of another one-fourth, were confronted with the prospect of a prolongation of litigations which had already been the subject-matter of two appeals in this Court, but were more particularly confronted with a situation where each day's delay was causing an irreparable loss to the estate of the indigent incompetent woman (R., p. 5). The committee further sets forth that his ward had been since her adjudication June 20, 1919, a public charge at the Government Hospital for the Insane, and since that date in need of money for clothing and for such minor luxuries as might alleviate her condition as a patient in an insane asylum; that with a little money much could be done to alleviate her condition; that with a substantial sum of money, the committee was advised that she might be placed in another institution where the surroundings would be more suitable to her refinement of taste and character.

It was upon the basis of these emergencies, none of which were ever denied by appellants in the record

that the order appointing the receiver of June 10, 1921, was passed.

And for the reasons above set forth, appellees respectfully submit that said order should be affirmed.

Respectfully submitted,

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CHARLES V. IMLAY,
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